

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION

FILED

AN DUY NGUYEN,

PETITIONER

v.

C 07-3979 SI (PR)

M FEB 26 2008  
RICHARD W. WILSON, CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MIKE EVANS, WARDEN,

RESPONDENT.

I THE PETITIONER AN DUY NGUYEN AM  
ANSWERING THE RESPONDENT MEMORANDUM  
OF POINTS AND AUTHORITIES.

FIRST OFF YOUR HONOR I AM NOT A LAWYER  
HAVE NEVER STUDY LAW, BUT THE COURT TOLD  
ME THAT I COULD DO THIS MYSELF WITHOUT  
THE HELP OF A LAWYER AND SO YOUR HONOR PLEASE  
BEAR WITH ME, BECAUSE ALL I AM ASKING HERE  
IS FOR "JUSTICE"  
ON DECEMBER, 1, 2004 I WAS CONVICTED BY A JURY FOR  
SECOND DEGREE MURDER, YOUR HONOR SOMETHING IS  
VERY WRONG HERE! THIS SECOND DEGREE MURDER



1 That i was convicted for is wrong honor.  
 2 IF you will your honor in the RESPONDENT  
 3 MEMORANDUM OF POINTS AND AUTHORITIES IN  
 4 SUPPORT OF ANSWER TO PETITION FOR WRIT OF  
 5 HABEAS CORPUS. PAGE 5 LINE 17 AND THIS IS  
 6 STATEMENT OF FACTS. THAT THERE WAS A "MELEE"  
 7 AND THE PROSECUTION'S CASE PAGE 9 LINE 13  
 8 THE PROSECUTION'S WITNESSES ALSO SAID THAT  
 9 THIS WAS A "ALTERCATION" AND ON THIS SAME  
 10 PAGE LINE 17 AND 18 THE WAITRESS THAT WORK  
 11 IN THE CAFE MADE A STATEMENT TO THE POLICE  
 12 THAT A "FIGHT BROKE OUT" AND ON PAGE 10  
 13 LINES 2 AND 3 THE PROSECUTION'S STAR WITNESS  
 14 ALSO STATED. BAO TESTIFIED THAT A "FIGHT BROKE  
 15 OUT". YOUR HONOR I ASK THE COURT JUST ON  
 16 THE PROSECUTION'S CASE ALONE. I THE PETITIONER  
 17 ASK THE COURT ON IT'S OWN TO THROW OUT  
 18 THE SECOND DEGREE MURDER CONVICTION AGAINST  
 19 THE PETITIONER. THERE IS NO SECOND DEGREE  
 20 MURDER HERE. THERE IS ONLY A FIGHT THAT  
 21 WENT VERY WRONG BETWEEN SOME YOUNG PUNKS  
 22 THE PROSECUTION'S CASE PAGE 9 LINES 10, 11, THE  
 23 PROSECUTION STATE THAT THERE WAS A CIVALRY  
 24 BETWEEN VG AND ASIAN WARRIOR WHICH MEAN  
 25 THAT BOTH GROUP'S ARE ALWAYS TRYING TO HURT EACH  
 26 OTHER. WHICH MEANS THAT WE ARE ALL QULITY.  
 27 I THE PETITIONER DID NOT GO IN THE CAFE TO KILL



(3)

1 Your honor the state APPELLATE COURT  
 2 DID UNREASONABLY REJECTED THE PETITIONER  
 3 CLAIM THAT THE TRIAL COURT AND THE  
 4 PROSECUTOR VOUCHED FOR THE CREDIBILITY  
 5 OF THE WITNESS BAO TRAN. AND ALSO THE  
 6 PETITIONER WAS DEPRIVED OF THE EFFECTIVE  
 7 ASSISTANCE OF COUNSEL AT THE TRIAL  
 8 WHEN my trial attorney failed to object  
 9 TO THE PROSECUTION'S IMPROPER VOUCHING  
 10 FOR IT'S OWN WITNESS.

11 PAGE 13 LINE 6 BAO NEGOTIATED A guilty PLEA TO  
 12 BEING AN ACCESSORY AFTER THE FACT.  
 13 LINES 7,8, TELL US THE PLEA BARGAIN OBLIGATIONS  
 14 WHICH WAS TO TESTIFY HONESTLY AND TRUTHFULLY FOR  
 15 THE PEOPLE AND ACCEPT A REINSTATEMENT OF THE  
 16 MURDER CHARGE IF THE TRIAL COURT FOUND THAT HE  
 17 DID NOT FULFILL THE PLEA BARGAIN OBLIGATIONS.

18 Your Honor under BRIAN A. BUCKLEY v. C.A. TERTHUNE  
 19 NO. 03-55045 - UNITED STATES COURT OF APPEALS  
 20 FOR THE NINTH CIRCUIT, 441 F.3d 688; 2006 U.S.  
 21 LEXIS 6612.

22 THE PROSECUTION AND THE COURT MADE A  
 23 PLEA AGREEMENT WITH BAO THE PROSECUTION'S  
 24 WITNESS, THAT PLEA AGREEMENT HERE IN  
 25 CALIFORNIA IS A FORM OF CONTRACT AND ACCORDING  
 26 TO THE SAME RULES AS OTHER CONTRACTS. Thus UNDER  
 27 ADAMSON, CALIFORNIA COURTS ARE REQUIRED TO CONSTRUE

1 AND INTERPRET PLEA AGREEMENTS IN ACCORDANCE  
 2 WITH STATE CONTRACT LAW!

3 YOUR HONOR THE SAME PAGE 13 FACTUAL BACKGROUND  
 4 LINES 10 TO 17 THE PROSECUTION'S WITNESS BAO  
 5 BREACHED THE PLEA AGREEMENTS WHICH IS THE  
 6 SAME AS A CONTRACT WHEN BAO STARTED TO

7 TELL "LIES" LINES 10 TO 17. DENYING RECOLLECTION  
 8 SAYING HE DON'T RECALL AND DON'T REMEMBER.  
 9 THE PLEA AGREEMENTS WAS TO TESTIFY HONESTLY,  
 10 AND TRUTHFULLY, WHICH BAO DID NOT DO SO.

11 SO THE PLEA AGREEMENTS CONTRACT WAS -

12 BREACHED AND YES YOUR HONOR THE PROSECUTION  
 13 DID IMPROPERLY VOUCHING FOR IT'S OWN WITNESS.  
 14 LINES 18 TO 20 THE PROSECUTION STARTED THREATENING  
 15 THEIR WITNESS. ON LINES 16 TO 20 THE PROSECUTION  
 16 STARTED THREATENING BAO. ONCE THE PLEA AGREEMENTS

17 OR BREACHED WHICH THE ~~BAO~~ WITNESS BAO  
 18 STARTED TELLING LIES. LINE 16. I DO WANT TO REMIND  
 19 YOU THAT I AM THE ONE THAT WILL BE DECIDING WHAT THE

20 YOUR SENTENCE IS TO BE AND THE REST OF WHAT THE  
 21 PROSECUTION TOLD BAO WAS A THREAT PUT IN A WAY  
 22 THAT BAO KNEW WHAT WOULD HAPPEN. HE, BAO  
 23 WOULD BE CHARGED WITH MURDER IF HE, BAO DID  
 24 NOT SAY WHAT HE, BAO MADE A PLEA AGREEMENTS  
 25 TO SAY. SO LATER WHEN THE PROSECUTION ARGUED TO

26 THE JURY AND WAS VOUCHING FOR THE WITNESS. IT  
 27 WAS IMPROPER VOUCHING BECAUSE THE PROSECUTOR



1 WAS TELLING THE JURY WHAT THE WITNESS SAY  
 2 PAGE 13 LINES 22 TO 25, WHAT THE PROSECUTOR  
 3 WAS VOUCHING FOR WAS MORE LIES. YOUR  
 4 HONOR THE RESPONDENT WANT YOU TO BELIEVE  
 5 THAT AFTER THE PROSECUTION THREATEN BAO  
 6 THAT HE BETTER TELL THE TRUTH OR THEY THE  
 7 PROSECUTION WOULD CHARGE BAO WITH MURDER  
 8 AND BAO SEEN THE LIGHT AND STARTED TELLING  
 9 THE TRUTH. YOUR HONOR BAO STARTED OUT  
 10 TELLING LIES AND KEPT TELLING LIES BUT, THE  
 11 LIES THE PROSECUTION WANTED TO HEAR.  
 12 YOUR HONOR JUST BY THESE FACTS I JUST  
 13 STATED THE PROSECUTION WAS IMPROPER  
 14 VOUCHING FOR "BAO"  
 15 ALSO YOUR HONOR WHEN MY TRIAL ATTORNEY DID NOT  
 16 OBJECT TO THE IMPROPER VOUCHING BY THE PROSECUTION  
 17 AND MY TRIAL ATTORNEY DID NOT OBJECT TO THE TRIAL  
 18 COURT ERROR BY OMITTING TO INSTRUCT THE JURY ON THE  
 19 LESSER AND INCLUDED OFFENSE OF VOLUNTARY MANSLAUG-  
 20 HTHER! THIS ACT BY MY TRIAL ATTORNEY WAS A ACT OF  
 21 INEFFECTIVE ASSISTANCE OF COUNSEL AND ALSO  
 22 BY THE APPELLATE ATTORNEY FAIL TO ARGUE TO THE  
 23 COURT OF APPEAL THAT THE TRIAL COURT HAD ERRED BY  
 24 OMITTING TO INSTRUCT THE JURY ON THE LESSER AND THE  
 25 INCLUDED OFFENSE OF VOLUNTARY MANSLAUGHTER AND THE  
 26 IMPROPER VOUCHING, THIS WAS INEFFECTIVE ASSISTANCE OF  
 27 COUNSEL BY THE APPELLATE ATTORNEY AND FOR THE

(6)

1 ABOVE STATED FACTS OF IMPROPER VOUCHING  
 2 AND INEFFECTIVE ASSISTANCE OF COUNSEL,  
 3 IN VIOLATION OF MY CONSTITUTIONAL RIGHTS  
 4 AND THESE ACTS DENY ME A FAIR TRIAL.  
 5 I ASK THE COURT FOR THESE REASONS ALONE  
 6 THAT THIS MURDER CONVICTION BE OVERTURNED,  
 7 REVERSED.

8 MEMORANDUM OF POINTS AND AUTHORITIES

9 BRIAN A. BUCKLEY V. C.A. TERTHUNE, NO. 03-55045 -  
 10 UNITED STATES COURTS OF APPEALS - FOR THE NINTH  
 11 CIRCUIT, 441 F.3d 688; 2006 U.S. LEXIS 6612  
 12 A PLEA AGREEMENT IS THE SAME AS A CONTRACT AND  
 13 ON PAGE 13 LINES 10 TO 17 WHEN THE WITNESS STARTED  
 14 TELLING "LIES" THE CONTRACT WAS BREACHED AND SO  
 15 THE PROSECUTION WAS VOUCHING FOR A "LIAR" AND SO,  
 16 THAT IS IMPROPERLY VOUCHING FOR IT'S OWN WITNESS. //  
 17 IMPERMISSIBLE VOUCHING MAY OCCUR WHERE THE PROSECUTOR  
 18 PLACES THE PRESTIGE OF THE GOVERNMENT BEHIND A  
 19 WITNESS. PEOPLE V. WILLIAMS (1997) 16 CAL. 4TH 153, 257  
 20 ON PAGE 13 LINES 22 TO 25 THE PROSECUTOR ARGUED TO  
 21 THE JURY THAT BAO WAS TELLING THE TRUTH AND THAT  
 22 PLACES THE PRESTIGE OF THE GOVERNMENT BEHIND BAO.  
 23 THE PROSECUTOR WAS NOT PLACING ASSURANCES, BASED ON  
 24 THE RECORD REGARDING THE APPARENT HONESTY OR RELIABILITY  
 25 OF PROSECUTION WITNESS! THIS WAS NOT THE CASE YOUR  
 26 HONOR, BEFORE PROSECUTOR WAS VOUCHING FOR BAO

(A)

1 PAGE 13 LINES 10 TO 17 THE WITNESS WAS TELLING LIES  
 2 PEOPLE V. FRYE (1998) 18 CAL. 4TH 894, THERE WAS NO  
 3 ERROR IN PROSECUTOR'S RECOUNTING THE NATURE OF THE  
 4 PROSECUTION'S AGREEMENT WITH A WITNESS AS AN AID  
 5 TO THE JURY'S EVALUATION OF HIS CREDIBILITY.  
 6 YOUR HONOR THIS IS NOT THE CASE, THE PROSECUTOR  
 7 WAS RECOUNTING THE NATURE OF THE PLEA AGREEMENT  
 8 TO THE WITNESS BAO AS A THREAT LETTING BAO  
 9 THE WITNESS KNOW THAT IF HE DID NOT START  
 10 TO SAY WHAT THE PROSECUTOR WANTED HIM TO SAY  
 11 THE PROSECUTOR WOULD CHARGE BAO WITH MURDER  
 12 PAGE 13 LINES 17 TO 20  
 13 UNITED STATES V. YOUNG, 470 U.S. 1, 18-19 (1985)

14 PROSECUTORIAL COMMENTS MAY VIOLATE DUE PROCESS IF  
 15 THEY CONVEY TO THE JURY THAT IT IS PERMITTED (B)  
 16 TO RELY ON THE GOVERNMENT'S VIEW OF THE -  
 17 EVIDENCE. ON PAGE 13 LINES 22 TO 25 THE PROSECUTOR  
 18 IS TELLING THE JURY THAT BECAUSE BAO MADE A  
 19 PLEA AGREEMENT HE IS TELLING THE TRUTH AND NOTHING  
 20 BUT THE TRUTH SO THE PROSECUTOR IS TELLING THE  
 21 JURY TO RELY ON THE GOVERNMENT'S VIEW OF THE  
 22 EVIDENCE AND TO FORGET ABOUT THE LIES BAO  
 23 WAS TELLING ON LINES 12 TO 20

24 UNITED STATES V. CREAMER, 555 F. 2D 612, 617-18  
 25 (7TH CIR. 1977) PERMISSIBLE TO PUT BEFORE THE JURY  
 26 BOTH THE WITNESS'S UNDERSTANDING OF HIS PLEA AGREEMENT  
 27 AND WHAT WOULD HAPPEN IF WITNESS VIOLATED IT.

1 THE PROSECUTOR APPLY THE PLEA AGREEMENT AND  
 2 WHAT WOULD HAPPEN IF HE BAO VIOLATED IT  
 3 BEFORE THE JURY IS WHEN BAO WAS TELLING  
 4 LIES ALREADY AND HAD ALREADY VIOLATED HIS  
 5 PLEA AGREEMENT'S PAGE 13 LINES 10 TO 20.  
 6 BAO IS NOT BEING TRUTHFUL THAT'S WHEN THE  
 7 PROSECUTOR BRING UP THE PLEA AGREEMENT!!  
 8 BY REPRESENTING TO THE JURY THAT THE PROSECUTION  
 9 HAD ONLY ASKED BAO TRAN TO TELL THE TRUTH "AFTER"  
 10 BAO HAD ALREADY LIE THE PROSECUTION AND THE COURT  
 11 ITSELF IMPROPERLY SUGGESTED TO THE JURY TO FORGET  
 12 ABOUT BAO TELLING LIES AND THAT THE PROSECUTION AND  
 13 THE COURT HAD MADE BAO TELL THE TRUTH BECAUSE  
 14 OF A PLEA AGREEMENT SUCH A SUGGESTION TO THE JURY  
 15 DIRECTLY INVOLVES THE PROSECUTION IN THE IMPROPER  
 16 AND UNETHICAL PRACTICE OF VOUCHING FOR ITS OWN -  
 17 WITNESSES. (SEE, E.G., UNITED STATES V. NECOECHA -  
 18 (9TH CIR. 1992) 986 F.2D 1273, CITING UNITED STATES  
 19 V. SHAW (9TH CIR. 1987) 829 F.2D 714, 716-18, CERT.  
 20 DENIED, 485 U.S. 1022 (1988) SUCH REPRESENTATIONS  
 21 OR IMPLICATIONS ARE A WAY OF IMPROPERLY PLACING THE  
 22 PRESTIGE OF BOTH LAW ENFORCEMENT AND THE COURT  
 23 BEHIND THE WITNESS.

24 UNITED STATES V. SMITH (9TH CIR. 1992) 962 F.2D 923  
 25 WHERE THE PROSECUTOR COMMITTED IMPROPER VOUCHING  
 26 WHEN HE ASSURED THE JURY IN CLOSING ARGUMENT THAT  
 27 HIS JOB WAS TO TURN OVER FAVORABLE EVIDENCE TO THE

1 DEFENSE AND TO LEAD THE JURY TO THE TRUTH AND THAT  
 2 IF HE DID ANYTHING WRONG IN THE TRIAL HE WOULD BE  
 3 REMOVED BY THE COURT.

4 UNITED STATES V. NECOECHA, SUPRA, 986 F.2D 1273  
 5 AT P. 1278) VOUCHING IS ESPECIALLY PROBLEMATIC  
 6 IN CASES WHERE THE CREDIBILITY OF WITNESSES IS  
 7 CRUCIAL, AND HAS OFTEN REQUIRED REVERSAL IN THAT  
 8 CIRCUMSTANCE. BAO WAS THE PROSECUTOR STAR  
 9 WITNESS!

10 PEOPLE V. MEZA (1981) 116 CAL. APP. 3D 988, 998.)  
 11 IT IS WELL ESTABLISHED THAT A DEFENDANT IS DENIED  
 12 A FAIR TRIAL IF THE PROSECUTION'S CASE DEPENDS  
 13 SUBSTANTIALLY ON TESTIMONY SECURED THROUGH AN  
 14 IMMUNITY AGREEMENT WHICH PLACES THE WITNESS UNDER  
 15 A STRONG COMPELSION TO TESTIFY IN A PARTICULAR  
 16 FASHION.

17 PEOPLE V. MEDINA (1974) 41 CAL. APP. 3D 438, 455-456.)  
 18 THE CALIFORNIA SUPREME COURT HAS RECENTLY REAFFIRMED THIS  
 19 PRINCIPLE, HOLDING THAT IF AN ACCOMPLICE IS GRANTED IMMUNITY  
 20 SUBJECT TO THE CONDITION THAT HIS TESTIMONY SUBSTANTIALLY  
 21 CONFORM TO AN EARLIER STATEMENT GIVEN TO POLICE, THE  
 22 ACCOMPLICE'S TESTIMONY IS "TAINTED BEYOND REDEMPTION"  
 23 AND ITS ADMISSION DENIES THE DEFENDANT A FAIR TRIAL.  
 24 PEOPLE V. FIELDS (1983) 35 CAL. 3D 329 THIS COURT EXPLAINED  
 25 THAT THE REQUIREMENTS OF DUE PROCESS ARE MET IF THE  
 26 PROSECUTION'S AGREEMENT WITH THE WITNESS PERMITS THE  
 27 WITNESS TO "TESTIFY FREELY" AT TRIAL AND TO RESPOND TO ANY

1 claim that he breached the agreement by showing  
2 that the testimony he gave was a "full and truthful"  
3 account!

4 Due process was violated here the witness BAO  
5 was not allowed to "testify freely" once again page  
6 13 lines 10 to 20 the prosecutor had to tell BAO  
7 how to testify or if not BAO would have answered,  
8 every question with "i don't recall" or "i don't remember"  
9 and the prosecutor NEVER ASK BAO was he telling  
10 the truth because the prosecutor knew BAO was  
11 telling "lies" so the prosecutor told BAO to do your  
12 best to tell the truth! which is just like saying  
13 just make it a believable lie!

14 People v. DeSantis (1992) 2 Cal. 4th 1198-1219-1220  
15 Agreement requiring only truthful testimony is  
16 acceptable.

17

18

19

20

21

22

23

24

25

26

27



THE STATE APPELLATE COURT DID ERROR  
IN REJECTING THE CLAIMS THAT PROSECUTOR  
COMMITTED MISCONDUCT IN CLOSING ARGUMENT

The prosecutor did deny petitioner a fair trial  
By making misstatements of the law and other  
acts of misconduct in his arguments to the jury.

THE PROSECUTOR'S FOURTH STATEMENT PAGE 22  
LINES 15 TO 20 THE PROSECUTOR PLAYS A MIND  
READER IN COURT WHEN THE PROSECUTOR ARGUE  
THAT SELF-DEFENSE ALL DEALS WITH WHAT'S IN THE  
DEFENDANT'S MIND THE PROSECUTOR DO NOT KNOW WHAT  
WAS ON THE DEFENDANT'S MIND AT THE TIME OF THE  
SO-CALLED MURDER. BUT LET'S GO WITH WHAT THE  
PROSECUTOR SAY AND SAY THAT THE PROSECUTOR  
DID KNOW WHAT WAS ON THE DEFENDANT'S MIND  
AT THE TIME OF THE CRIME. AND SO WE WILL YOUR  
HONOR GO WITH LINE 18 AND 19 WHAT'S SO IMPORTANT  
FOR SELF-DEFENSE IS WHAT'S IN THE DEFENDANT'S MIND!

PAGE 7 LINE 14 PETITIONER SAID HE WAS REACTING IN FEAR  
WHEN HE STABBED VU IN THE CHEST. FEAR WAS IN THE  
PETITIONER MIND. PAGE 11 LINES 7 TO 9 PETITIONER NEVER  
INTENDED TO KILL VU, IN THE PETITIONER MIND HE THOUGHT  
HE WAS BEING ATTACKED AND THAT HIS LIFE WAS IN  
JEOPARDY THIS WAS WHAT WAS ON THE PETITIONER  
MIND. AND ONCE AGAIN WE GO BACK TO PAGE 22 LINES  
18 AND 19 WHAT'S SO IMPORTANT FOR SELF-DEFENSE IS WHAT'S  
IN THE DEFENDANT'S MIND AND IN THIS CASE THE

1 defendant testified!  
 2 PAGE 22 LINES 15 TO 17 THE PROSECUTOR REMARKS  
 3 OR IT'S NOT WHAT'S ON THEVIDEOTAPE" SO I ASK  
 4 THE COURT TO PUT TO THE SIDE AND NOT USE  
 5 THE STATEMENT OF FACTS AND THE FATAL ALTERCATION  
 6 AS SHOWN ON THEVIDEOTAPE PAGE 2, 3, 4, 5, 6, AND  
 7 PAGE 7 LINES 1 TO 7 BECAUSE AS THE PROSECUTOR SAY  
 8 IT'S NOT WHAT'S ON THEVIDEOTAPE, "IT'S WHAT'S IN THE  
 9 DEFENDANT'S MIND"  
 10 PAGE 18 LINES 22 TO 24 THE PROSECUTOR SAY THAT THE  
 11 DEFENDANT IS GUILTY OF MURDER, UNLESS THERE EVIDENCE  
 12 TO PROVE THAT SOMETHING MITIGATES IT DOWN TO A -  
 13 VOLUNTARY MANSLAUGHTER. THE PROSECUTOR IS TELLING  
 14 THE JURY THAT THE DEFENDANT MUST PROVE THAT  
 15 THIS IS A MANSLAUGHTER WHEN BY LAW THAT'S  
 16 THE PROSECUTOR JOB IS TO PROVE THE CRIME,!!  
 17 AND THERE IS REASONABLE LIKELIHOOD THAT THE JURY TOOK  
 18 THE ASSAILED REMARKS OUT OF CONTEXT!  
 19 PAGE 20 LINES 11, TO 12 THE PROSECUTOR MISSTATED THE LAW  
 20 WHEN THE PROSECUTOR SAID NOW A VOLUNTARY MANSLAUGHTER  
 21 IS BASICALLY THE MURDER OF A HUMAN BEING WITH THE INTENT  
 22 TO KILL! THESE REMARKS BY THE PROSECUTOR TOOK ANY  
 23 CHANCE THAT I HAD FOR VOLUNTARY MANSLAUGHTER AWAY  
 24 FROM ME, THE PROSECUTOR LIE TO THE JURY THAT THERE  
 25 IS INTENT TO KILL IN A VOLUNTARY MANSLAUGHTER, THE  
 26 PROSECUTOR WAS TELLING THE JURY THAT A VOLUNTARY MANSLAUGH-  
 27 TER IS THE SAME AS ANY OTHER MURDER, WITH INTENT TO

1 Kill! The jury did take this statement out of  
 2 context and i was found guilty of second degree  
 3 MURDER.'

4 PAGE 24 LINES 7 TO 11 THE PROSECUTOR REMARKS  
 5 DID HELP TO CONVIET THE DEFENDANT!  
 6 THE PROSECUTOR IS TELLING THE JURY TO COME TOGETHER  
 7 AS A COMMUNITY AND TAKE CHARGE AND STAND UP TO  
 8 THE GANG MEMBERS! THE PROSECUTOR IS TELLING THE  
 9 JURY TO GIVE THE VU PHAM'S FAMILY JUSTICE, AND THIS  
 10 MEANS TO RETALIATE AGAINST THE DEFENDANT. AND YOUR  
 11 HONOR I WANT YOU TO THINK WHAT WAS IN THE JURORS  
 12 MIND WHEN VU PHAM'S FAMILY OR SITTING THERE CRYING  
 13 FOR THE DEAD SON! THE JURY WOULD THINK IT'S THE RIGHT  
 14 THING TO DO IS TO REACH OUT AND HELP VU PHAM'S FAMILY  
 15 AND TO FIND THE DEFENDANT GUILTY OF MURDER ALL  
 16 BECAUSE OF THE REMARKS OF THE PROSECUTOR,  
 17 THE PROSECUTOR IS NOT TALKING ABOUT EVIDENCE -  
 18 HERE THE PROSECUTOR IS APPEALING TO THE JURORS  
 19 HEART AND MIND!!.

20 UNITED STATES V. MONAGHAN (D.C. Cir. 1984) 741 F.2d 1434

21 AT P. 1441, IT IS GENERALLY INAPPROPRIATE FOR A PROSECUTOR TO  
 22 ASK JURORS TO STEP OUTSIDE THEIR ROLE AS OBJECTIVE FACT  
 23 FINDERS! THE EVIL LURKING IN SUCH PROSECUTIONAL APPEALS IS  
 24 THAT THE DEFENDANT WILL BE CONVICTED FOR REASONS WHOLLY  
 25 IRRELEVANT TO HIS OWN GUILT OR INNOCENCE. JURORS MAY BE PERSUA-  
 26 ED BY SUCH APPEALS TO BELIEVE THAT, BY CONVICTING A DEFENDANT, THEY  
 27 WILL ASSIST IN THE SOLUTION OF SOME PRESSING SOCIAL PROBLEM!

1 THE STATE APPELLATE COURT DID ERROR  
 2 WHEN IT REJECTED THE CLAIM THAT DEFENSE  
 3 COUNSEL'S FAILURE TO OBJECT THE ASSERTED  
 4 INSTANCES OF PROSECUTORIAL MISCONDUCT  
 5 DEPRIVED PETITIONER OF EFFECTIVE -  
 6 ASSISTANCE OF COUNSEL!

7 PETITIONER WAS DEPRIVED OF EFFECTIVE ASSISTANCE  
 8 OF COUNSEL, BOTH AT HIS TRIAL AND IN HIS  
 9 DIRECT APPEAL. BY BOTH TRIAL COUNSEL AND  
 10 APPELLATE COUNSEL FAILED ARGUE TO THE COURT  
 11 APPEAL ABOUT THE MANY ACTS OF MISCONDUCT  
 12 BY THE PROSECUTOR AND THE TRIAL COUNSEL  
 13 FAILED TO OBJECT TO THE MANY ACTS OF -  
 14 MISCONDUCT AT TRIAL WHICH I HAVE ALREADY  
 15 STATED ABOVE. DUE TO THESE FACTS I WAS DENY  
 16 A FAIR TRIAL!

17 PEOPLE V. SIMPSON (1954) 43 CAL. 2D 552,

18 SULLIVAN V. LOUISIANA (1993) 508 U.S. 275. 124 L. ED. 2D  
 19 182. 113 S. CT. 2078. 2081-82

20 PEOPLE V. BROPHY (1954) 122 CAL. APP. 2D 638, 647.

21 PEOPLE V. SHOEMAKE (1982) 135 CAL. APP. 3D 442  
 22 446.

23 PEOPLE V. SMITH (1967) 249 CAL. APP. 2D 395, 404.]

24

25

26

27

1 THE STATE APPELLATE COURT DID ERROR WHEN  
 2 IT REJECT PETITIONER'S CLAM THAT IMPROPER  
 3 PINPOINT INSTRUCTIONS VIOLATED DUE ~~PROCESS~~<sup>15</sup> PROCESS  
 4 AND ALSO THE COURTEROR WHEN IT REJECT  
 5 PETITIONER CLAM THAT THE APPELLATE ATTORNEY  
 6 ~~REAGAN~~ FAILED TO ARGUE TO THE COURT  
 7 OF APPEAL THAT THE TRIAL COURT ERRED IN  
 8 FAILING TO ALLOW PETITIONER'S JURY TO  
 9 CONSIDER A VERDICT OF INVOLUNTARY -  
 10 MANSLAUGHTER!

11 IMPROPER PINPOINT INSTRUCTIONS CALJIC NOS.2.03  
 12 2.06 AND 2.52 VIOLATED PETITIONER DUE PROCESS  
 13 PEOPLE .V. MOORE (1954) 43 CAL.2d 517, 526-527  
 14 REAGAN .V. UNITED STATES (1895) 157 U.S. 301, 310  
 15 WARDIUS .V. OREGON (1973) 412 U.S. 470.  
 16

17 A Trial court must instruct the Jury on EVERY -  
 18 THEORY of the CASE WHICH IS SUPPORTED BY  
 19 SUBSTANTIAL EVIDENCE (PEOPLE .V. EDWARDS (1985) 39  
 20 CAL.3d 107, 116. PEOPLE .V. GEIGER (1984) 35 CAL.3d 510  
 21 519; PEOPLE .V. FLANNEL (1979) 25 CAL.3d 668-684.  
 22 WHERE THE THEORY IS THAT THE DEFENDANT  
 23 COMMITTED A LESSER INCLUDED OFFENSE, THE COURT  
 24 MUST INSTRUCT ON THE LESSER INCLUDED OFFENSE WHEN  
 25 THERE IS EVIDENCE FROM WHICH A JURY COMPOSED  
 26 OF REASONABLE PERSON COULD CONCLUDE THE DEFENDANT  
 27 WAS GUILTY OF THE LESSER CRIME

1 PEOPLE.V.WICKERSHAM(1982) 32 CAL.3D 307,305  
 2 PEOPLE.V.FLANNEL, SUPRA. 25 CAL.3D AT P.684

3 PEOPLE.V.BARTON(1995) 12 CAL.4TH 186

4 PEOPLE.V.CARMEN(1951) 36 CAL.2D 768,773

5 IN 2000, THIS COURT HELD THAT VOLUNTARY-  
 6 MANSLAUGHTER CAN EXIST EVEN IF A KILLING IS  
 7 UNINTENTIONAL. PEOPLE.V.LASKO(2000) 23 CAL.  
 8 4TH 101,107-110,

9 PEOPLE.V.BLAKELEY(2000) 23 CAL.4TH 82,87-91

10 PEOPLE.V.BLAKELEY, SUPRA. 23 CAL.4TH AT P.85  
 11 INVOLUNTARY MANSLAUGHTER, IN CONTRAST, EXISTS  
 12 WHEN A DEATH OCCURS WITHOUT MALICE IN THE  
 13 COMMISSION OF AN UNLAWFUL ACT. NOT AMOUNTING  
 14 TO A FELONY, OR IN THE COMMISSION OF A LAWFUL  
 15 ACT WHICH MIGHT PRODUCE DEATH.

16 PEN. CODE, 192 SUBD.(B),) THE MENTAL STATE  
 17 REQUIREMENT FOR INVOLUNTARY MANSLAUGHTER  
 18 IS CRIMINAL NEGLIGENCE. (SEE PEN. CODE, 20

19 PEOPLE.V.WELLS(1996) 12 CAL.4TH 979,988

20 PEOPLE.V.STUART(1956) 47 CAL.3D 167,174

21 PEOPLE.V.COX(2000) 23 CAL.4TH 665,6721

22 PEOPLE.V.BODO(1990) 229 CAL.APP.3D 1417-1443

23 PEOPLE.V.GLENN(1991) 229 CAL.APP.3D 1461

24 PETITIONER CASE IS SIMILAR TO THIS CASE AND THE  
 25 SECOND APPELLATE DISTRICT HELD THAT ERROR HAD BEEN  
 26 COMMITTED WHEN THE TRIAL COURT DECLINED TO INSTRUCT  
 27 ON INVOLUNTARY MANSLAUGHTER.



1 THE STATE APPELLATE COURT DID ERROR  
2 IN REJECTING PETITIONER'S CLAIM OF  
3 CUMULATIVE ERROR.

4 Your Honor there are many errors here and  
5 individually errors. Parle v. Runnels, 505 F.3d  
6 922,927 (9th Cir. 2007) Supreme Court  
7 Precedent clearly established that the combined  
8 effect of multiple trial court errors violates  
9 due process where it render the resulting  
10 criminal trial fundamentally unfair.

11 CONCLUSION:

12 for the reasons stated PETITIONER'S  
13 REQUESTS THAT THE CONVICTION BE REVERSAL

14  
15 DATED: Feb, 3, 2008

16  
17 Respectfully submitted

18  
19 An Duy Nguyen

20  
21 AN DUY NGUYEN



